KA / BG-GPO/2515/WPP-47/2006-2008



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೧	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಆಗಸ್ಟ್ ೩೧, ೨೦೦೬ (ಭಾದ್ರಪದ ೯, ಶಕ ವರ್ಷ ೧೯೨೮)	ಸಂಚಿಕೆ ೩೫

ಭಾಗ - ೪

ರಾಜ್ಯದ ವಿಧೇಯಕಗಳ ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ರಾಜ್ಯದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರದ ಮತ್ತು ರಾಜ್ಯದ ಶಾಸನಗಳ ಮೇರೆಗೆ ರಾಜ್ಯ ಸರ್ಕಾರವು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ರಾಜ್ಯಾಂಗದ ಮೇರೆಗೆ ರಾಜ್ಯಪಾಲರು ಮಾಡಿದ ನಿಯಮಗಳು, ಹಾಗೂ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ಮಾಡಿದ ನಿಯಮಗಳು.

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 31 ಕೇಶಾಪ್ರ 2006, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 7ನೇ ಆಗಸ್ಟ್ 2006

2006ನೇ ಸಾಲಿನ ಮಾರ್ಚ್ 20ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ– II ಸೆಕ್ಷನ್ 1 ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Companies Secretaries (Amendment) Act, 2006 (Act No. 8 of 2006) ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

THE COMPANY SECRETARIES (AMENDMENT) ACT 2006

AN

Act

Further to amend the Company Secretaries Act, 1980

Be it encted by Parliament in the Fifty -seventh Year of the Republic of India as follows:

1. Short title and commencement: (1) This Act may be called the Company Secretaries (Amendment) Act, 2006.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Amendment of section 2: In the Company Secretaries Act, 1980 (here in after referred to as the principal Act), in (56 of 1980) sub-section (1) of section 2,

(i) after clause (a), the following clauses shall be inserted, namely:

'(aa) "Authority" means the Appellate Authority referred to in section 22A;

(aaa) " Board" means the Quality Review Board constituted under section 29 A;' ;

(ii) after clause (g), the following clause shall be inserted, namely:

'(ga) "notification" means a notification published in the Official Gazette;';

(iii) after clause (i), the following clauses shall be inserted, namely:

'(ia) " Specified" means specified by rules made by the Central Government under this Act;

(ib) "Tribunal" means a Tribunal established under sub-section (1) of section 10 B;'

3. Amendment of section 4: In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

"(3) Every person belonging to any of the classes mentioned in clauses (c), (d) and (e) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand."

4. Amendment of section 5: In section 5 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

"(3) A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow;

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

Explanation I: For the purposes of this sub-section, a person shall be deemed to have practised in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practise during that period.

Explanation II: In computing the continuous period during which a person has been an Associate of the Institute, there shall be included any continuous period during which the person has been an Associate of the dissolved company immediately before he became an Associate of the Institute."

5. Amendment of section 6.: In section 6 of the principal Act,

(i) for sub-section (2), the following sub-section shall be substituted, namely:

" (2) A member who desires to be entitled to practise shall make an application in such form and pay such annual fee, for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand."

(ii) after sub-section (2), the following sub-section shall be inserted, namely:

"(3) The certificate of practice otained under sub-section (I) may be cancelled by the Council under such circumstances as may be prescribed."

6. Amendment of section 9: In section 9 of the principal Act,

(i) for sub-section (2), the following sub-section shall be substituted, namely:

"(2) The Council shall be composed of the following persons, namely:

(a) not more than fifteen persons elected by the members of the Institute from amongst the Fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a Fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than five persons nominated in the specified manner by the Central Government.";

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:

" (3) No person holding a past under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause(a) of sub-section (2) for a period of three years after he ceases to be an auditor."

7. Substitution of new section for section 10: For section 10 of the principal Act, the following section shall be substituted, namely:

"10. Re-election or re-nomination to Council: A member of the Council, elected or nominated under sub-section (2) of section 9, shall be eligible for re-election or, as the case may be, re-nomination;

Provided that no member shall hold the office for more than two consecutive terms:

Provided futher that a member of the Council, who is or has been elected as President under sub-section (I) of section 12, shall not be eligible for election or nomination as a member of the Council"

8. Insertion of new sections 10A and 10B: Afeter section 10 of the principal Act, the following section shall be inserted, namely:

"10A. Settlement of disputes regarding election: In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of declaration of the result of election to the Secretary of the Institute, who shall forward the same to the Central Government.

10B. Establishment of Tribunal: (1) On receipt to any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment,

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term and who is not a sitting member of the Council or who has not been a candidate in the election in the election under dispute; or

(c) as a Member unless he holds the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding officer and Members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the council"

9. Amendment of section 12: In section 12 of the principal Act,

(i) in sub-section (2), for the words "Chief Executive Authority", the word "Head" shall be substituted;

(ii) in sub-section (3), after the words "he shall be eligible for re-election", the words, brackets and figure" under sub-section (I)" shall be inserted;

(iii) for sub-section (4), the following sub-section shall be substituted, namely:

"(4) On the expiration of the duration of the Council, or of the term of office of the President and the Vice -President thereof, the President and the Vice-President shall continue to hold office until such time as a new president and the Vice-president is elected and takes over charge of their duties."

10. Amendment of section 13: In section 13 of the principal Act,

(i) in sub-section (2), after the words "meetings of the Council", the words "or he has been found guilty of any professional or other misconduct and awarded penalty of fine," shall be inserted;

(ii) in the proviso to sub-section (3), for the words "six months" the words "one years" shall be substituted.

11. Amendment of section 14: In section 14 of the principal Act, in sub-section (I), for the words "three years", the words "four years" shall be substituted.

12. Substitution of new section for section 15: For section 15 of the principal Act, the following section shall be substituted, namely:

"15. Functions of Council: (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include-

(a) to approve academic courses and their contents ;

(b) the prescribing of fees for the examination of candidates for enrolment;

(c) the prescribing of qualifications for entry in the Register;

(d) the recognition of foreign qualifications and training for purposes of enrolment;

(e) the prescribing of guidelines for granting or refusal of certificates of practice under this Act;

(f) the levy of fees from members, examinees and other persons;

(g) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(h) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in such matters of interest to Company Secretaries as may be prescribed;

(i) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act'

(j) to enable functioning of the Quality Review Board;

(k) consideration of the recommendations of the Quality Review Board made under clause (a) of section 29B and details of action taken thereon in is annual report; and

(l) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time."

13. Insertion of new sections 15A and 15B.: After section 15 of the principal Act, the following sections shall be inserted, namely:

"15A. Functions of Institute: The functions of the Institute shall include-

(a) the examination of candidates for enrolment;

(b) the regulation of training of students;

(c) the maintence and publication of a Register of persons qualified to practice as Company Secretaries;

(d) collection of fees from members, examinees and other persons;

(e) subject to the orders of the appropriate authorities under this Act, the removal of names from the Register and the restoration to the Register of names which have been removed'

(f) the maintenance of a library and publication of books and periodicals relating to management of companies and allied subjects;

(g) the conduct of elections to the Council of the Institute; and

(h) the granting or refusal of certificates of practice as per guidelines issued by the Council.

15B. Imparting education by Universities and other bodies: (1) Subject to the provisions of this Act, any University established by law or anybody affiliated to the institute, may impart education on the subjects covered by the academic courses of the Institute.

(2) The Universities or bodies referred to in sub-section (I) shall, while awarding degree, diploma or certificate or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Institute.

(3) Nothing contained in this section shall enable a University or a body to adopt a name or nomenclature which is in any way similar to that of the Institute."

14. Substitution of new section for section 16.: For section 16 of the principal Act, the following section shall be substituted,namely;

"16. Officers and employees, salary, allowances, etc: (1) For the efficient performance of its duties, the Council shall-

(a) appoint a Secretary of the Council to perform auch duties as may be prescribed;

(b)appoint a Director (Discipline) to perform such functions as assigned to him under this Act and the rules and regulations framed thereunder;

(c) designate an officer of the Council or the Institute to carry out the administrative functions of the Institute as its chief executive.

(2) The Council may also-

(a) appoint such other officers and employees to the Council and the Institute as it considers necessary;

(b) require and take from the Secretary or from any other officer or employee of the Council and the Council and the Institute such security for the due performance of his duties, as the Council considers necessary;

(c) prescribe the salaries, fees, allowances of the officers and employees of the Council and the Institute and their terms and conditions of service;

(d) with the previous sanction of the Central Government, fix the allowances of the president, Vice-president and other members of the Council and members of its Committees;

(3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat."

15. Amendment of section 17: In section 17 of the principal Act,

(a) in sub-section (I), for clause (b), the following clause shall be substituted, namely:

"(b)a Finance Committe; and';

"(b) for sub-section (3), the following sub-section shall be substituted, namely:

"(3) Each of the Standing Committees shall consist of the President and the Vice-president ex officio, and minimum of three and maximum of five members to be elected by the council from amongst its members.";

(c) sub-sections(4)and (5) shall be omitted;

(d) in sub-section (6)., for the words"two-thirds of the total membership of the Committee", the words" one -third of the total membership of the Committee" shall be substituted.

16. Amendment of section 18.: In section 18 of the principal Act,-

(i) for sub-sections (3), (4) and (5), the following sub-section shall be substituted, namely:

"(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

(4) The Council shall prepare in the manner prescribed and approve, prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expeditures for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a Chartered Accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided futher that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report on it to the Central Government.";

(ii) after sub-section (5), the following sub-sections shall be inserted, namely:

"(5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

(5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forewarded to the Central Government and to all the members of the Institute."

17. Amendment of section 19: In section 19 of the principal Act,-

(i) in sub-section (3), the words "on payment of such amount as may be prescribed" shall be inserted at the end;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:

"(4) Every member of the Institute shall, on his name being entered in the Register, pay such membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand which shall not in any case exceed rupees ten thousand."

18. Amendment of section 20: In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:

"(3) If the name of any member has been removed from the Register under clause (c) of sub-section (I), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council, which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government ,determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand."

19. Substitution of new section for section 21: For section 21 of the principal Act, the following section shall be substituted, namely:

"21. Disciplinary Directorate: (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Diciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director(Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage."

20. Insertion of new sections 21A, 21B, 21C and 21D : After section 21 of the principal Act, the following sections shall be inserted, namely:

'**21A. Board of Discipline:** (1) The Council shall constitute a Bosard of Discipline consisting of -

(a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (I) of section 16;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh

(4) The Director (Discipline)shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director(Discipline),close the matter or in case of disagreement, may advise the Director(Discipline) to futher investigate the matter.

21B. Disciplinary Committee: (1) The Council shall constitute a Disciplinary Comittee consisting of the president or the Vice-President of the Council as the presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the person of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committee as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before, it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it sahll afford to the member an opportunity of being heard before making any order against him and may thereafer take any one or more of the following actions, namely:

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. Authority Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court: For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (5 of 1908) in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Explanation: For the purposes of sections 21,21A, 21B, 21C, and 22, "member of the Institute" included a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

21D. Transitional provisions: All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Company Secretaries (Amendment) Act, 2006 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Company Secretaries (Amendment) Act, 2006."

21. Substitution of new section for section 22: For section 22 of the principal Act, the following section shall be substituted, namely:

"22. Professional or other misconduct defined: For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules,but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21to inquire into the conduct of any member of the Institute under any other circumstances;"

22. Insertion of new sections 22A, 22B, 22C, 22D and 22E: After section 22 of the principal act the following sections be inserted, namely:

22A. Constitution of Appellate Authority: The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, (38 of 1949) shall be deemed to be Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely:

"(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council;".

22B. Term of office of members of Authority: A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

22C. Procedure, etc., of Authority: The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 (38 of 1949) shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members, and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.

22D. Officers and other staff of Authority: (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

22E. Appeal to Authority: (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B,may within ninety days from the date on date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided futher that the Authority may entertain any such appeal after the expiry of the period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section(3) of section 21A and sub-section (3) of section 21B and may-

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, or enchance the penalty imposed by the order;

(c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

(d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order'.

23. Amendment of section 25: In section 25 of the principal Act, sub-section (3) shall be omitted.

24. Amendment of section 27: In section 27 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:

"(2) Any person who contravenes the provisions of sub-section (I) shall, with out prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with a fine not less than ten thousand rupees but which may extend to two lakh rupees or with both".

25. Insertion of new Chapter VIIA: After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:

"CHAPTER VIIA

QUALITY REVIEW BOARD

29A. Establishment of Quality Review Board: (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and four other members.

(2) The Chairperson and members of the Board shall be appointed from amongst the person of eminence having experience in the field of law, economics, business, finance or accountancy.

(3) Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

29B. Functions of Board: The Board shall perform the following functions, namely:

(a) to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including secretarial services;and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

29C. Procedure of Board: The Board shall meet at such time and place and follow in its meetings such procedure as may be specified.

29D. Terms and conditions of service of Chairperson and members of Board and its expenditure: (1) The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified.

(2) The expenditure of the Board shall be borne by the Council."

26. Omission section 30: Section 30 of the principal Act shall be omitted.

27. Substitution of new section for section 36: For section 36 of the principal Act, the following section shall be substituted, namely:

"36. Protection of action taken in good faith: No suit, prosecution or other legal proceeding shal lie against the Central Government or the Council or the Authority or the Disciplinary Committee or the Tribunal or the Board or the Board of Discipline or the Disciplinary Directorate or any officer of that Government, Council, Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate, for anything which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder."

28. Insertion of new section 36A: After section 36 of the principal Act, the following section shall be inserted, namely:

"36A. Members etc, to be public servants: The Chairperson, Presiding Officer, members and other officers and employees of the Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate shall be deemed to be public servants within the meaning of section 21 (45 of 1860) of the Indian Penal Code."

29. Insertion of new section 38A: After section 38 of the principal Act, the following section shall be inserted, namely:

"38A. Power of Central Government to make rules: (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the presiding Officer and Members of the Tribunal, place of meetings and allowances to be paid to them under sub-section (3) of section 10B;

(c) the procedure of investigation under sub-section (4) of section 21;

(d) the procedure while considering the cases by the Discilpinary Committee under sub-section (2) and fixation of allowances of the nominated members under sub-section (4) of section 21B;

(e) the procedure to be followed by the Board in its meetings under section 29C; and

(f) the terms and conditions of service of the Chairperson and members of the Board under sub-section (I) of section 29D."

30. Amendment of section 39: In section 39 of the principal Act,-

(i) in sub-section (2),-

(a) in clause (a), for the word, brackets and figures "items (I), (3)", the word, brackets and figure "item (2)" shall be substituted;

(b) in clause (d), the words, brackets and letter "clause (a) of " shall be omitted;

(c) clause (g), clause (I) and clause (q) shall be omitted;

(d) in clause(i), for the word, brackets and letter "clause (i)", the word, brackets and letter "clause (g)" shall be substituted;

(e) in clause (i), for the word, brackets and letter "clause (i)", the word, brackets and letter "clause (h)" shall be substituted;

(f) in clause (k), for the words, brackets, letter and figures "clause (k) of sub-section (2) of section 15", the words, brackets, letters and figure "clause (f) of section 15A" shall be substituted;

(ii) sub-section(4) shall be omitted.

31. Insertion of new section 40: After section 39 of the principal Act, the following section shall be inserted, namely:

"40. Rules, regulations and notifications to be laid before parliament: Every rule and every regulation made and every notification issued under this Act shall be laid, as soon may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made, or issued, the rule, regulation or notification shall thereafter have effect only in such modified from or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification."

32. Substitution of new Schedules for First Schedule and Second Schedule: For the First Schedule and the Second Schedule to the principal Act, the following Schedules shall be substituted, namely:

'THE FIRST SCHEDULE

[See sections 21 (3), 21 A(3) and 22]

PART I

Professional misconduct in relation to company secretaries in practice

A Company Secretary in practice shall be deemed to be guilty of Professional misconduct, if he-

(1) allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation: In this item,"partner" includes a person residing outside India with whom a Company Secretary in practice has entered into partenership which is not in contravention of item (4) of this part;

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;

(4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under' clause (e) of sub-section (I) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;

(5) secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this part;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting-

(i) any company secretary from applying or requesting for or inviting or securing professional work from another company secretary in practice; or

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

(8) accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act, 1956 (1 of 1956);

(II) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary, or any other statements relating thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person-

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III

professional misconduct in relation to member of the Institute generally

A member of the Institute, whether in paactice or not, shall be deemed to be guilty of professional misconduct, if he-

(1) not being a Fellow of the Institute, acts as a Fellow of the Institute;

(2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Discplinary Committee, Quality Review Board or the Appellate Authority;

(3) while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6)and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if-

(1) he is held guilty by any civil or criminal court for offence which is punishable with imprisonment for a term not exceeding six months;

(2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

THE SECOND SCHEDULE

[See sections 21 (3), 21B (3) and 22]

PART I

Professional misconduct in relation to company secretaries in practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he-

(1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;

(3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future trasnactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expreses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

(5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;

(6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

(10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whethere in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;

(2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, excepts as and when required by any law for the being in force or except as permitted by the employer;

(3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false'

(4) defalcates or embezzles moneys received in his professional capacity.

PART III

Other misconduct in relation to members of the Institute generally

Amember of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months'.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,
ರಿಚಾರ್ಡ್ ಲೋಬೋ
ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ,
ಸರ್ಕಾರದ ಉಪ ಕಾರ್ಯದರ್ಶಿ,
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಪಿ.ಆರ್. 68

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 32 ಕೇಶಾಪ್ರ 2006, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 7ನೇ ಆಗಸ್ಟ್ 2006

2006ನೇ ಸಾಲಿನ ಮಾರ್ಚ್ 20ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ– II ಸೆಕ್ಷನ್ 1 ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Cost and Works Accountants (Amendment) Act, 2006(Act No. 7 of 2006) ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

THE COSTAND WORKS ACCOUNTANTS (AMENDMENT) ACT 2006

AN

Act

Further to amend the Cost and Works Accountants Act, 1959.

Be it encted by Parliament in the Fifty -seventh Year of the Republic of India as follows:

1. Short title and commencement: (1) This Act may be called the Cost and works Accountants (Amendment) Act, 2006.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Amendment of section 2: In the Cost and Works Accountants Act, 1959 (23 of 1959) (hereinafter referred to as the principal Act), in sub-section (1) of section 2,

(i) after clause (a), the following clauses shall be inserted, namely:

'(aa) " Authority" means the Appellate Authority referred to in section 22A;

(aaa) " Board" means the Quality Review Board constituted under section 29 A;' ;

(ii) after clause (f), the following clause shall be inserted, namely:

'(fa)"notification" means a notification published in the Official Gazette;';

(iii) after clause (i), the following clauses shall be inserted, namely:

'(ia) " Specified" means specified by rules made by the Central Government under this Act;

(ib) "Tribunal" means a Tribunal established under sub-section (1) of section 10 B;'

3. Amendment of section 4 : In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

"(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv) and(v) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand."

4. Amendment of section 5: In section 5 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:

"(4) A member, being an Associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a cost accountant shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a fillow of the Institute:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

Explanation I: For the purposes of this sub-section, a person shall be deemed to have practiced in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practice during that period.

Explanation II: In computing the continuous period during which a person has been an associate of the Institute, there shall be included any continuous period during which the person has been an associate of the dissolved company immediately before he became an associate of the Institute."

5. Amendment of section 6: In section 6 of the principal Act,

(i) for sub-section (2), the following sub-section shall be substituted, namely:

"(2) Every such member shall make an application in such form and pay such annual fee, for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand."

Provided further that if a member of the Institute who was in practice immediately before the commencement of this Act, has made within one month of such commencement an application for the grant of certificate of practice, he shall not be deemed to have contravened the provisions of sub-section (i) by reason of his having practised during the period between such commencement and the disposal of the application.",

(ii) after sub-section (2), the following sub-section shall be inserted, namely:

"(3) The certificate of practice obtained under sub-section (I) may be cancelled by the Council under such circumstances as may be prescribed."

6. Amendment of section 9: In section 9 of the principal Act,

(i) for sub-section (2), the following sub-section shall be substituted, namely:

"(2) The Council shall be composed of the following persons, namely:

(a) not more than fifteen persons elected by the members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the complection of the period of removal of name from the Register or payment of fine, as case may be;

(b) not more than five persons nominated in the specified manner by the Central Government.";

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:

" (3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause(a) of sub-section (2) for a period of three years after he ceses to be an auditor."

7. Substitution of new section for section 10: For section 10 of the principal Act, the following section shall be substituted, namely:

"10. Re-election or re-nomination to Council: A member of the Council, elected or nominated under sub-section (2) of section 9, shall be eligible for re-election or, as the case may be, re-nomination;

Provided that no member shall hold the office for more than two consecutive terms:

Provided further that a member of the Council, who is or has been elected as President under sub-section (I) of section 12, shall not be eligible for election or nomination as a member of the Council"

8. Insertion of new sections 10A and 10B: After section 10 of the principal Act, the following section shall be inserted, namely:

"10A. Settlement of disputes regarding election: In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of declaration of the result of election to the Secretary of the Institute, who shall forward the same to the Central Government.

10B. Establishment of Tribunal: (1) On receipt to any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment,

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term and who is not a sitting member of the Council or who has not been a candidate in the election under dispute; or

(c) as a Member unless he holds the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding officer and Members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

The expenses of the tribunal shall be borne by the council"

9. Amendment of section 12: In section 12 of the principal Act,

(i) in sub-section (2), for the words "Chief Executive Authority", the word "Head" shall be substituted;

(ii) in sub-section (3),

(a) after the words "he shall be eligible for re-election", the words, brackets and figure" under sub-section (I)" shall be inserted;

(b) in the proviso, for the words "the President", the words "the President and the Vice-President" shall be substituted.

10. Amendment of section 13: In section 13 of the principal Act,

(i) in sub-section (2), after the words "meetings of the Council", the words "or he has been found guilty of any professional or other misconduct and awarded penalty of fine," shall be inserted;

(ii) in the proviso to sub-section (3), for the words "six months", the words "one year" shall be substituted.

11. Amendment of section 14: In section 14 of the principal Act, in sub-section (I), for the words "three years", the words "four years" shall be substituted.

12. Substitution of new section for section 15: For section 15 of the principal Act, the following section shall be substituted, namely:

"15. Functions of Council: (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include-

(a) to approve academic courses and their contents ;

(b) the prescribing of fees for the examination of candidates for enrolment;

(c) the prescribing of qualifications for entry in the Register;

(d) the recognition of foreign qualifications and training for purposes of enrolment;

(e) the prescribing of guidelines for granting or refusal of certificates of practice under this Act;

(f) the levy of fees from members, examinees and other persons;

(g) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(h) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;

(i) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act'

(j) to enable functioning of the Quality Review Board;

(k) consideration of the recommendations of the Quality Review Board made under clause (a) of section 29B action taken thereon with a report to the Central Government within a period of three months, and their inclusion in the annual report ; and

(l) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time."

13. Insertion of new sections 15A and 15B: After section 15 of the principal Act, the following sections shall be inserted, namely:

"15A. Functions of Institute: The functions of the Institute shall include-

(a) the examination of candidates for enrolment;

(b) the regulation of training of students;

(c) the maintenance and publication of a Register of persons qualified to practice as Cost accountants;

(d) collection of fees from members, examinees and other persons;

(e) subject to the orders of the appropriate authorities under this Act, the removal of names from the Register and the restoration to the Register of names which have been removed'

(f) the maintenance of a library and publication of books and periodicals relating to accountancy and allied subjects;

(g) the conduct of elections to the Council of the Institute; and

(h) the granting or refusal of certificates of practice as per guidelines issued by the Council.

15B. Imparting education by Universities and other bodies: (1) Subject to the provisions of this Act, any University established by law or any body affiliated to the Institute,may impart education on the subjects covered by the academic courses of the Institute.

(2) The Universities or bodies referred to in sub-section (1) shall, while awarding degree, diploma or certificate or or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Institute.

(3) Nothing contained in this section shall enable a University or a body to adopt a name or nomenclature which is in any way similar to that of the Institute."

14. Substitution of new section for section 16: For section 16 of the principal Act, the following section shall be substituted,namely;

"16. Officers and employees, salary, allowances, etc: (1) For the efficient performance of its duties, the Council shall-

(a) appoint a Secretary of the Council to perform such duties as may be prescribed;

(b)appoint a Director (Discipline) to perform such functions as assigned to him under this Act and the rules and regulations framed thereunder;

(c) designate an officer of the Council or the Institute to carry out the administrative functions of the Institute as its chief executive.

(2) The Council may also-

(a) appoint such other officers and employees to the Council and the Institute as it considers necessary;

(b) require and take from the Secretary or from any other officer or employee of the Council and the Council and the Institute such security for the due performance of his duties, as the Council considers necessary;

(c) prescribe the salaries, fees, allowances of the officers and employees of the Council and the Institute and their terms and conditions of service;

(d) with the previous sanction of the Central Government, fix the allowances of the president, Vice-president and other members of the Council and members of its Committees;

(3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat."

15. Amendment of section 17: In section 17 of the principal Act,

(a) in sub-section (I), for clause (b), the following clause shall be substituted, namely:

"(ii) a Finance Committee; and".

"(b) for sub-section (3), the following sub-section shall be substituted, namely:

" (3) Each of the Standing Committees shall consist of the President and the Vice-president ex officio, and minimum of three and maximum of five members to be elected by the council from amongst its members.";

(c) sub-sections(4)and (5) shall be omitted;

(d) in sub-section (6)., for the words"two-thirds of total membership of the Committee", the words" one -third of the total membership of the Committee" shall be substituted.

16. Amendment of section 18: In section 18 of the principal Act,-

(i) for sub-sections (3), (4) and (5), the following sub-section shall be substituted, namely:

"(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

(4) The Council shall prepare in the manner prescribed and approve, prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expeditures for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a Chartered accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then the Council may, wherever appropriate cause a special audit or such other action as it considers necessary and shall furnish an action taken report on it to the Central Government.";

(ii) after sub-section (5), the following sub-sections shall be inserted, namely:

"(5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

(5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forewarded to the Central Government and to all the members of the Institute."

17. Amendment of section 19: In section 19 of the principal Act,-

(i) in sub-section (3), the words "on payment of such amount as may be prescribed" shall be inserted at the end;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:

"(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand which shall not in any case exceed rupees ten thousand."

18. Amendment of section 20: In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:

"(3) If the name of any member has been removed from the Register under clause (c) of sub-section (I), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council, which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government ,determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand."

19. Substitution of new section for section 21: For section 21 of the principal Act, the following section shall be substituted, namely:

"21. Disciplinary Directorate: (1) The Council shall, by notification, establish a Disciplnary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Diciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director(Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage."

20. Insertion of new sections 21A, 21B, 21C and 21D : After section 21 of the principal Act, the following sections shall be inserted, namely:

'21A. Board of Discipline: (1) The Council shall constitute a Board of Discipline consisting of -

(a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (I) of section 16;

(c) the Director (Discipline) shall function as he Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director(Discipline),close the matter or in case of disagreement, may advise the Director(Discipline) to further investigate the matter.

21B. Disciplinary Committee: (1) The Council shall constitute a Disciplinary Comittee consisting of the president or the Vice-President of the Council as the presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committee as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before, it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. Authority Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court: For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (5 of 1908) in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Explanation: For the purposes of sections 21,21A, 21B, 21C, and 22, "member of the Institute" iincluded a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

21D. Transitional provisions: All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Cost and Works Accountants (Amendment) Act, 2006 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Cost and Works Accountants (Amendment) Act, 2006."

21. Substitution of new section for section 22: For section 22 of the principal Act, the following section shall be substituted, namely:

'22. Professional or other misconduct defined: For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules,but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (I) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances;"

22. Insertion of new sections 22A, 22B, 22C,22D and 22E: After section 22 of the principal Act, following sections shall be inserted, namely:

22A. Constitution of Appellate Authority: The Appellate Authority constituted under sub-section (I)of section 22A of the Chartered Accountants Act, 1949, (38 of 1949) shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b)of said sub-section (I), the following clause had been substituted, namely:

"(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Cost and Works Accountants of India for at least one full term and who is not a sitting member of the Council;".

22 B. Term of office of members of Authority: A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

22C. Procedure, etc., of Authority: The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 (38 of 1949) shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members, and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.

22D. Officers and other staff of Authority: (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

22E. Appeal to Authority: (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided futher that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section(3) of section 21A and sub-section (3) of section 21B and may-

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, or enchance the penalty imposed by the order;

(c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

(d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order'.

23. Amendment of section 25: In section 25 of the principal Act, sub-section (3) shall be omitted.

24. Amendment of section 27: In section 27 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:

"(2) Any person who contravenes the provisions of sub-section (I) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with a fine not less than ten thousand rupees but which may extend to two lakh rupees or with both".

25. Insertion of new Chapter VIIA: After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:

"CHAPTER VIIA
QUALITY REVIEW BOARD

29A. Establishment of Quality Review Board: (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and four other members.

(2) The Chairperson and members of the Board shall be appointed from amongst the person of eminence having experience in the field of law, economics, business, finance or accountancy.

(3) Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

29B. Functions of Board: The Board shall perform the following functions, namely:

(a) to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including cost audit services;and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

29C. Procedure of Board: The Board shall meet at such time and place and follow in its meetings such procedure as may be specified.

29D. Terms and conditions of service of Chairperson and members of Board and its expenditure: (1) The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified.

(2) The expenditure of the Board shall be borne by the Council."

26. Omission section 33: Section 30 of the principal Act shall be omitted.

27. Substitution of new section for section 36: For section 36 of the principal Act, the following section shall be substituted, namely:

"36. Protection of action taken in good faith: No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Authority or the Disciplinary Committee or the Tribunal or the Board or the Board of Discipline or the Disciplinary Directorate or any officer of the Government, Council, Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate, for anything which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder."

28. Insertion of new section 36A: After section 36 of the principal Act, the following section shall be inserted, namely:

"36A. Members etc, to be public servants: The Chairperson, Presiding Officer, members and other officers and employees of the Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate shall be deemed to be public servants within the meaning of section 21 (45 of 1860) of the Indian Penal Code."

29. Insertion of new section 38A: After section 38 of the principal Act, the following section shall be inserted, namely:

"38A. Power of Central Government to make rules: (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or or any of the following matters, namely:

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the presiding Officer and Members of the Tribunal, place of meetings and allowances to be paid to them under sub-section (3) of section 10B;

(c) the procedure of investigation under sub-section (4) of section 21;

(d) the procedure while considering the cases by the Discilpinary Committee under sub-section (2) and fixation of allowances of the nominated members under sub-section (4) of section 21B;

(e) the procedure to be followed by the Board in its meetings under section 29C; and

(f) the terms and conditions of service of the Chairperson and members of the Board under sub-section (I) of section 29D."

30. Amendment of section 39: In section 39 of the principal Act,-

(i) in sub-section (1), the words "and a copy of such regulations shall be sent to each member of the Institute" shall be omitted;

(i) in sub-section (2),-

(a) in clause (h), the words, "the Council and" shall be omitted;

(b) clause (g), shall be omitted;

(ii) sub-section(4) shall be omitted.

31. Insertion of new section 40: After section 39 of the principal Act, the following section shall be inserted, namely:

"40. Rules, regulations and notifications to be laid before parliament: Every rule and every regulation made and every notification issued under this Act shall be laid, as soon may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made, or issued, the rule, regulation or notification shall thereafter have effect only in such modified from or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification."

32. Substitution of new Schedules for First Schedule and Second Schedule: For the First Schedule and the Second Schedule to the principal Act, the following Schedules shall be substituted, namely:

'THE FIRST SCHEDULE

[See sections 21 (3), 21 A(3) and 22]

PART I

Professional misconduct in relation to company secretaries in practice

A Cost accountant in practice shall be deemed to be guilty of Professional misconduct, if he-

(1) allows any person to practice in his name as a Cost accountant unless such person is also a Cost accountant in practice and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation: In this item,"partner" includes a person residing outside India with whom a Cost accountant in practice has entered into partenership which is not in contravention of item (4) of this part;

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;

(4) enters into partnership, in or outside India, with any person other than a Cost accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under' clause (iv) of sub-section (I) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;

(5) secures, either through the services of a person who is not an employee of such cost accountant or who is not his partner or by means which are not open to a Cost accountant, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this part;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting-

(i) any cost accountant from applying or requesting for or inviting or securing professional work from another cost accountant in practice; or

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than Cost accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Cost accountant of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

(8) accepts a position as a Cost accountant previously held by another Cost accountant in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;

(10) engages in any business or occupation other than the profession of Cost accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Cost accountant from being a director of a company (not being a manging director or a wholetime director) unless he or any of his partners is interested in such company as a accountant;

(II) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any cost or pricing statements or any other statements relating thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person-

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Cost accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III

professional misconduct in relation to member of the Institute generally

A member of the Institute, whether in paactice or not, shall be deemed to be guilty of professional misconduct, if he-

(1) not being a Fellow of the Institute, acts as a Fellow of the Institute;

(2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Discplinary Committee, Quality Review Board or the Appellate Authority;

(3) while inviting professional work from another Cost accountant or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6)and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if-

(1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

(2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

THE SECOND SCHEDULE

[See sections 21 (3), 21B (3) and 22]

PART I

Professional misconduct in relation to cost accountants in practice

A Cost accountant in practice shall be deemed to be guilty of professional misconduct, if he-

(1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of cost accounting and relating statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Cost accountant in practice;

(3)permits his name or the name of his firm to be used in connection with an estimate of cost or earnings contingent upon future trasnactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expreses his opinion on cost or pricing statements given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

(5) fails to disclose a material fact known to him in a cost or priving statement which is not disclosed in a cost or pricing statement but disclosure of which is necessary in making such statement, where he is concerned with such statement in a professional capacity;

(6) fails to report a material mis-statement known to him to appear in a cost or pricing statement with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure of costing and pricing applicable to the circumstances;

(10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whethere in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;

(2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, excepts as and when required by any law for the time being in force or except as permitted by the employer;

(3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false'

(4) defalcates or embezzles moneys received in his professional capacity.

PART III

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months'.

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